

ST 06-13

Tax Type:

Sales Tax

Issue:

Occasional Sales – Non-Retail Transactions (Exempt)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC RACING,  
Taxpayer**

**No. 05-ST-0000  
IBT# 0000-0000  
NTL# 00 00000000000000  
00 00000000000000**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; Mr. John Doe, *pro se*, on behalf of ABC Racing.

**Synopsis:**

This matter comes on for hearing pursuant to the timely protest of ABC Racing (hereinafter referred to as the “taxpayer”) of Notices of Tax Liability number 0000000000000000 and 0000000000000000 assessing sales tax, penalty and interest for the period July 2001 through September 2003. The assessment determinations are based on a finding that the taxpayer failed to collect and remit Retailers’ Occupation tax on sales of National Association for Stock Car Auto Racing (“NASCAR”) related items as souvenirs at NASCAR racing events held in Illinois during 2001, 2002 and 2003. The issue in this case is whether the Department of Revenue (“Department”) timely and

properly notified the taxpayer of its responsibilities under the Retailers' Occupation Tax and of the amount of tax due on its sales. After a thorough review of the facts and law presented, it is my recommendation that the liability in question be upheld. In support of this conclusion, I make the following findings of fact and conclusions of law.

**Findings of Fact:**

1. The *prima facie* case of the Department, inclusive of all jurisdictional elements, was established by the admission into evidence of Notices of Tax Liability number 00 00000000000000 and number 00 00000000000000, and the Department's Audit Correction and/or Determination of Tax Due covering the period 7/1/01 through 9/30/03. Department Group Ex. 1.
2. The taxpayer, an out of state corporation based in Somewhere, Pennsylvania, is an itinerant vendor engaged in the sale of NASCAR related products at NASCAR automobile racing events held in Illinois and other states. Tr. pp. 3, 16-18; Taxpayer Ex. 1.
3. The tax assessed in this matter is attributable to the taxpayer's failure to collect and pay over Retailers' Occupation tax (sales tax) on sales of NASCAR related products during NASCAR automobile racing events held at the Anywhereland Speedway during 2001, 2002 and 2003. Tr. pp. 10, 11; Taxpayer Ex. 1. These events ordinarily are of brief duration, generally lasting no more than three days, and are only occasionally held in Illinois. Tr. p. 17.
4. The taxpayer filed no returns reporting taxes due on sales made during the tax period in controversy. *Id.*; Taxpayer Ex. 1.

5. The taxpayer's sales were made from two mobile trailers, which the taxpayer moves from state to state. Tr. pp. 8, 16; Taxpayer Ex. 1.
6. The taxpayer was not notified of its obligation to collect Illinois sales taxes on its sales in this state until 2004, after filing for a sales tax license number as part of the process of obtaining a county or township license to conduct business during that year. Tr. p. 11. After being notified of its tax collection obligations, the taxpayer obtained an Illinois Business Tax Number and began collecting sales tax. *Id.*; Taxpayer Ex. 1.
7. After the taxpayer commenced compliance, the Department, applying provisions of 35 ILCS 120/3 applicable to transient merchants, required the taxpayer to make a daily report and payment of taxes on its sales. Tr. pp. 11, 12.
8. On February 17, 2005, the Department issued Notices of Tax Liability (“NTLs”) notifying the taxpayer of tax deficiencies for the tax period 7/1/01 through 9/30/03. Department Group Ex. 1. The taxpayer timely protested these NTLs. Taxpayer Ex. 1.
9. The Department determined the amount of unpaid taxes shown as deficiencies in the NTLs upon its review of information provided by MMM of Somewhere, Michigan (“MMM”). Tr. pp. 14, 15. MMM is responsible for arranging space for vendors at racing events held at racetracks that are owned by XYZ Corporation, an affiliated company.<sup>1</sup> *Id.*

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<sup>1</sup> MMM is responsible for organizing and assigning retailing locations at NASCAR racing events in Illinois. As a consequence, it is required to file reports with the Department pursuant to 35 ILCS 120/3.

### **Conclusions of Law:**

The Retailers' Occupation Tax (hereinafter referred to as the "ROT") imposes a tax upon all persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2.<sup>2</sup> The tax is imposed on the gross receipts from such sales made in the course of the conduct of a retail business in this state. *Id.*

The taxpayer is an itinerant vendor making sales at special events (NASCAR races) that are periodically held in Illinois. Tr. pp. 10, 11, 16-18; Taxpayer Ex. 1. Concerning the tax compliance obligations of transient or itinerant vendors, 86 Ill. Admin. Code, section 130.1990(a)(1) states as follows:

Persons who transport a supply of tangible goods from place to place, whether upon trucks, wagons or otherwise, exposing such goods for sale, soliciting and negotiating sales, and immediately delivering the goods sold, are considered to be peddlers, hawkers or itinerant vendors. Where such peddlers, hawkers or itinerant vendors sell such tangible personal property at retail in Illinois, on their own behalf, they are required to obtain a certificate of registration from the Department, file tax returns in conformance with the requirements of Section 3 of the Act and Subpart E of this Part and remit to the Department the Retailers' Occupation Tax on their receipts from such sales.  
86 Ill. Admin. Code, ch. I, section 130.1990(a)(1)

The taxpayer admits that it was a transient or itinerant vendor engaged in making retail sales in Illinois during the tax period in controversy, and that it failed to remit taxes due and owing on such sales in violation of sections 2 and 3 of the Retailers' Occupation Tax Act, 35 ILCS 120/2, 120/3. However, the taxpayer claims that its failure to collect and remit taxes should be excused because the Department failed to notify the taxpayer of its tax collection responsibilities and explain the state's compliance requirements and did not

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<sup>2</sup> A "sale at retail" is defined as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property ... [.]". 35 ILCS 120/1.

advise the taxpayer of its delinquent taxes for 2001, 2002 and 2003 until February, 2005. Tr. pp. 7, 10-13; Taxpayer Ex. 1. Accordingly, the issues presented in this case are whether the Department timely and properly notified the taxpayer of its noncompliance and its obligation to file tax returns and make tax payments to the state.

With respect to the taxpayer's claim that it was not timely notified of its tax liability, the record shows that the Department did not notify the taxpayer of its liability for failure to collect and remit taxes for the period 7/1/01 through 9/30/03 until February, 2005, when the NTLs were issued. However, the record also shows that the taxpayer failed to file any tax returns for the tax period in controversy. Tr. p. 17; Taxpayer Ex. 1.

The ROT generally limits the period within which an NTL can be issued. Specifically, 35 **ILCS** 120/5 provides that "no notice of tax liability shall be issued on and after each July 1 and January 1 covering gross receipts received during any month or period of time more than 3 years prior to such July 1 and January 1, respectively ... [.]". 35 **ILCS** 120/5. However, this section also expressly states that this statute of limitations does not apply "in the case of failure to file a return." *Id.* Accordingly, there is no statute of limitations barring the issuance of a Notice of Tax Liability at any time where the taxpayer fails to file returns and report taxes collected as required by section 3 of the Retailers' Occupation Tax Act, 35 **ILCS** 120/3.

Since the taxpayer failed to file any returns reporting taxes due for the period July 1, 2001 through September 30, 2003, the statute of limitations limiting the time within which a Notice of Tax Liability must be issued by the Department is not applicable in this case. Consequently, the Department's Notices of Tax Liability for the period 7/1/01 through 9/30/03 were not barred by section 5 of the ROT, 35 **ILCS** 120/5. In sum,

because the taxpayer failed to file any tax returns for the tax period in controversy, the NTLs at issue in this case were not barred by any statute of limitations and were, therefore, timely issued. For this reason, the taxpayer's claim that these NTLs were untimely must be rejected.

The taxpayer also argues that it was not properly notified of its tax compliance obligations. Specifically, the taxpayer states as follows:

In July of 2001 we attended the inaugural race at Anywhereand Speedway. Normally at a new event if the State requires us to collect tax a representative of the State would meet with us during our track meeting to select our parking spots. At that time we would be provided with the tax rates, items taxable and instruction on how to remit any tax due. In 2001 the Revenue Dept. neglected to meet with our people or provide us with any information. In 2002 the Revenue Dept. neglected to meet with or provide us with any information. In 2003 the Revenue Dept. neglected to meet with or provide us with any information.  
Taxpayer Ex. 1.

... And, you know, in my opinion, the Department of Revenue of Illinois dropped the ball, and now they are looking for somebody, you know, to bail [them] out.  
Tr. p. 18

The taxpayer essentially argues that its non-compliance for the period July, 2001 through September, 2003, which preceded any contact by the Department to notify the taxpayer of its tax compliance responsibilities, should be excused. With respect to the taxpayer's claim, the Department's PIO-28 (R 7/13)<sup>3</sup> entitled "Taxes at Fairs, Flea Markets,

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<sup>3</sup> PIO-28 (R 7/13) has been issued in accordance with 86 Ill. Admin. Code, Ch. I, section 1200.130 which provides as follows: "(b) The Department also periodically issues written and electronic publications. These are publications designed to provide general information about the Department and various topics of general interest to taxpayers and tax practitioners. The information contained in these publications does not represent binding positions of the Department of Revenue ... [.]

Festivals and Craft Shows” which addresses the compliance responsibilities of itinerant vendors and others that make sales at special events, states as follows:

**If I am not contacted at an event, what is my responsibility?**

If you are not contacted at an event, it is still your responsibility to collect tax at the proper rate, pay the tax collected to us, and report the tax for the correct location. To obtain the correct tax rate or for forms and information on how to file, please **contact us**.

Contrary to the taxpayer’s claim, PIO-28, which appears prominently on the Department’s website, expressly provides that the Department’s failure to notify an itinerant vendor making sales at a special event of its compliance responsibilities does not excuse the vendor from complying with the Retailers’ Occupation Tax Act or from collecting tax on its sales.

The conclusion reached in PIO-28 is supported by 20 **ILCS** 2520/1 through 20 **ILCS** 2520/7. These statutory provisions, which are also known as the “Taxpayers’ Bill of Rights Act,” spell out the duties and obligations of the Department to taxpayers. The rights of taxpayers, including when the Department is required to notify taxpayers of their duties and responsibilities, are codified in these provisions. Nowhere in any of them is the taxpayer afforded a right to be notified of its obligation to comply with the Retailers’ Occupation Tax Act before being required to do so. Indeed, neither the Retailers’ Occupation Tax Act nor any other Illinois statutory provision mandates such notification. While such notices may be given to out of state itinerant vendors from time to time as a courtesy, they are not statutorily required. Hence, the Department’s failure to notify the taxpayer of its compliance obligations provides no legal basis for the taxpayer’s claim that its non-compliance must be excused.

The gravamen of the taxpayer's claim is that its mistaken belief that tax was not due should be excused since it is unreasonable to expect a small out-of-state business to be familiar with the complex intricacies and compliance responsibilities of the Illinois Retailers' Occupation Tax Act. However, the Illinois courts have expressly held that an out-of-state taxpayer's mistaken belief that taxes are not due or collectible does not excuse failure to comply with Illinois' tax laws. Brown's Furniture v. Wagner, 171 Ill. 2d 410 (1996); Miller Brewing Company v. Korshak, 35 Ill. 2d 86 (1966). This conclusion has been reached even when the taxpayer has made a good faith effort to ascertain its compliance obligations. Brown's Furniture, *supra*.

Moreover, it is clear from Illinois case law that ignorance of the law is no excuse for compliance failure. Du Mont Ventilation Co. v. Department of Revenue, 99 Ill. App. 3d 263, 266 (3d Dist. 1981). This is particularly true where the laws that have not been complied with are clear and of long-standing duration, as is the case with sections 2 and 3 of the ROT, (35 ILCS 120/2, 120/3), the compliance provisions not complied with by the taxpayer, which have been in effect since the inception of the Retailers' Occupation Tax Act in 1933. See Reif v. Barrett, 355 Ill. 104 (1933). Indeed, it is a principle embedded deeply in our system of jurisprudence that one's ignorance of the law cannot excuse unlawful conduct. People v. Sevilla, 132 Ill. 2d 113, 127 (1989). Accordingly, I find the taxpayer's claim that its ignorance of Illinois law must excuse its non-compliance to be without merit.

**WHEREFORE**, for the reasons stated above, it is my recommendation that NTLs number 00 0000000000000 and number 00 0000000000000 be affirmed and finalized as issued.



Ted Sherrod  
Administrative Law Judge

Date: June 7, 2006